

**RAYANNE CHURCH**  
Claimant

**WICHITA JANITORIAL SERVICES**  
Respondent

**PATRONS INSURANCE COMPANY**  
Insurance Carrier

[illegible]

## ORDER

## ISSUES

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Administrative Law Judge on respondent's request for a rehearing of the preliminary hearing held in this matter on April 1, 1997. The preliminary hearing that took place on April 1, 1997, was held without the respondent or its insurance carrier being present. Following that hearing, the Administrative Law Judge entered the preliminary hearing Order dated April 2, 1997, that granted claimant's request for preliminary hearing benefits.

Before the Appeals Board addresses the merits of this case, the Appeals Board first has to determine whether it has jurisdiction to review the Administrative Law Judge's Order. The Appeals Board finds that the Administrative Law Judge's Order is not the result of a preliminary hearing held pursuant to K.S.A. 1996 Supp. 44-534a because the hearing addressed respondent's request for a rehearing and did not address the limited preliminary hearing issues of medical and temporary total disability compensation. Therefore, the Appeals Board finds the April 17, 1997, Order that is the subject of this appeal is reviewable by the Appeals Board because all other decisions and rulings of the Administrative Law Judge, that are not preliminary hearing orders, are subject to review by the Appeals Board. See K.S.A. 1996 Supp. 44-551(b)(1) and Shain v. Boeing Military Airplanes, 22 Kan. App.2d 913, 924 P.2d 1280 (1996).

The respondent argues it did not receive notice of the preliminary hearing held on April 1, 1997, as required by K.S.A. 1996 Supp. 44-534a(a)(1) which provides in pertinent part as follows:

"The director shall assign the application to an administrative law judge who shall set the matter for a preliminary hearing and **shall** give at least seven days' written notice by mail to the parties of the date set for such hearing." (Emphasis added).

The claimant's attorney entered into evidence at the April 1, 1997, preliminary hearing a copy of the Notice of Preliminary Hearing that he sent to only respondent's insurance carrier Patrons Insurance Company. The notice specified the time and place of the preliminary hearing.

The respondent's owner, Travis Cunningham, testified at the hearing on respondent's request for a rehearing that he did call claimant's attorney's office after he received the Notice of Intent letter from claimant's attorney. Mr. Cunningham testified that he telephoned claimant's attorney's office because he was confused as to the meaning of the letter. Mr. Cunningham further testified he did not receive notice of the preliminary hearing and the persons he talked to in claimant's office did not notify him that a preliminary hearing was scheduled.

Contained in both the preliminary hearing transcript held on April 1, 1997, and the respondent's request for rehearing transcript held on April 17, 1997, is the Administrative Law Judge's ruling that proper notice of the preliminary hearing was given to the respondent when the claimant sent notice to the respondent's insurance carrier. The Appeals Board finds that Patrons Insurance Company was the insurance carrier providing workers compensation coverage for the respondent on the alleged date of accident. The Appeals Board concludes sufficient notice was given to the respondent of the April 1, 1997, preliminary hearing by serving respondent's authorized agent, Patron Insurance Company, with the notice of time and place of the preliminary hearing.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order by Administrative Law Judge Nelsonna Potts Barnes dated April 17, 1997, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1997.

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BOARD MEMBER

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BOARD MEMBER

c: Russell B. Cranmer, Wichita, KS  
Scott J. Mann, Hutchinson, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director

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## ISSUES

- (1) Whether claimant's accidental injury arose out of and in the course of her employment with respondent.
- (2) Whether claimant gave respondent timely notice of the accident.

(1) The claimant testified she injured her low back while working for the respondent on November 21, 1996. Claimant admitted into evidence medical records which substantiated treatment of a low back injury that occurred while she working for the respondent.

Claimant's testimony was uncontradicted as neither respondent nor its insurance carrier appeared at the preliminary hearing. Therefore, the Appeals Board finds the uncontradicted evidence presented by the claimant proves she suffered a work-related injury.

(2) Claimant testified she notified her supervisor, Louis Hickman, on November 21, 1996, that she injured her low back at work. Claimant's testimony was uncontradicted as neither respondent nor its insurance carrier appeared. Therefore, the Appeals Board finds claimant satisfied the notice statute that requires the claimant to give the respondent notice of accident within 10 days. See K.S.A. 44-520.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the decision of Administrative Law Judge Nelsonna Potts Barnes dated April 2, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1997.

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BOARD MEMBER

c: Russell B. Cranmer, Wichita, KS  
Scott J. Mann, Hutchinson, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director